

Health Care Highlights©

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Good in morning! The fourth round of interim committee meetings of the 83rd West Virginia Legislature took place last week. Following this year's regular session and lengthy special session, interim meetings are being held each month through the start of the 2018 regular session on Jan. 10, 2018.

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Upcoming Interim Meetings:

- December 3-5
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Project Recodifies Chapter 16 on Public Health

A three-year project to recodify Chapter 16 of the West Virginia Code regarding Public Health has reached the half-way point, according to Jeff Johnson, counsel for the Senate Committee on Health and Human Resources. Johnson and legislative analyst Chris DeWitte presented a project update last Monday to the Joint Committee on Health.

“We see this as a long-term project,” Johnson told legislators. “We do not expect to have legislation ready for the 2018 session, and realistically, 2019 may be ambitious. This is a monumental project.”

Johnson and his counterpart, counsel Charles Roskovensky of the House Committee on Health and Human Resources, have been whittling away at the concept of rewriting and reorganizing Chapter 16 for several years. Several bills passed during the 2017 session were a step in the same direction: **SB 169**, repealing an article concerning assistance to Korea and Vietnam veterans exposed to certain defoliants or herbicides or other causative agents, including Agent Orange; **SB 170**, repealing the state hemophilia program; **SB 171**, repealing Programs of All-Inclusive Care of the Elderly (PACE); and **SB 176**, repealing an article concerning the detection of tuberculosis, high blood pressure and diabetes. All represented either discontinued programs, or programs long-since folded into other state and federal initiatives.

Catalysts for the recodification effort include disorganization – “Things are erratically placed throughout the code, Johnson remarked –as well as inefficiencies, inconsistencies and nonsensical placement of code sections. A revamped Chapter 16 also will allow for future growth in the statute to reflect changes in technology and medical advancement.

The new and improved Chapter 16 will include 11 parts: General Provisions; Powers and Duties of the Secretary, Commissioner and LOCHHRA (Legislative Oversight Commission on Health and Human Resources Accountability); Health Care Authority; Regulation of Services; Regulation of Practitioners and Facilities; Regulation of Water and Environmental Services; Women, Infants and Children’s Health; Infection, Communicable Disease, Disease Prevention and Treatment; Tobacco; Substance Use Prevention and Treatment; and Health Care Decisions and End of Life.

Currently, Chapter 16 does not take into account advances in technology. For example, a code section on communicable diseases on vessels or trains was last amended in 1923, and does not take into account air travel, mass-produced autos or mass transit. Other sections fail to account for advances in medicine and medical practice. A section on sexually transmitted diseases was originally drafted in 1921 and amended in 1923; it predates the widespread use of antibiotics. Penicillin was discovered in 1928.

Johnson said the project also has identified 20 advisory boards, commissions and councils within Chapter 16 which should be evaluated for cost, membership / vacancies, and necessity. Those groups do not include Chapter 30 boards. Other changes will focus on formatting, definitions, grammatical fixes and word usage.

Over the years, Johnson said, Chapter 16 also has become a catch-all for articles that don’t relate directly to Public Health. Many will be recommended for placement in other code chapters.

Sharpe Hospital Update Presented

Cabinet Secretary Bill Crouch of the state Department of Health and Human Resources says he will need three to six months to obtain recertification of a distinct part of William R. Sharpe Jr. Hospital in Weston to accept civil commitments. Crouch told the Legislative Oversight Commission on Health and Human Resources Accountability last Monday that he considered converting the entire 200-bed acute care psychiatric facility to accept only forensic patients – those ordered to be hospitalized through the judicial system -- but changed his mind after consulting with other providers, such as Highland Hospital in Clarksburg.

Sharpe Hospital was decertified by the Centers for Medicare and Medicaid Services (CMS), effective Sept. 28. After a complaint, a CMS survey last January determined the hospital was out of compliance with certain conditions for participation, specifically targeting how treatment plans for care are written. Return visits in April and July found the issue still unresolved. DHHR has since contracted with The Greeley Company of Boston to try to achieve and sustain compliance with CMS requirements. Greeley stated in its report summary, “The overall impression is that WRSJ Hospital provides good, sometimes excellent, care to a very challenging patient population.” Crouch noted that 52 Medicare and Medicaid patients were transferred out of Sharpe following the decertification.

Medical Cannabis Work Groups Organized

The Medical Cannabis Advisory Board is expected to review the results of two surveys when it next meets Dec. 14 in Morgantown. The board oversees the Office of Medical Cannabis, administered within the state Department of Health and Human Resources' Bureau for Public Health. Separate online surveys were created to gather information from patients who may be interested in obtaining medical cannabis, and to gauge from physicians how many of their current patients may be eligible. Both surveys were to be completed by mid-November.

Draft legislative rules also will be presented to the Advisory Board in December and made available for public comment. In the meantime, three board work groups have been organized:

- Work Group 1 is charged with assessing and making recommendations to change, add or reduce the types of medical conditions that qualify as serious medical conditions under the Medical Cannabis Act, and the types of medical professionals who can issue certifications to patients. Members include Dr. Arvinder Bir, Kimberly Knuckles, Dr. James Felsen and Dr. Rudy Malayil.
- Work Group 2 is charged with assessing and making recommendations as to the forms of medical cannabis that can be permitted under the new law, including whether dry leaf or the plant form of cannabis should be dispensed for administration by vaporization. Members include Michelle E. Easton, PharmD, Dr. Joseph Selby, D. Keith Randolph and Russell A. Williams.
- Work Group 3 is charged with assessing and developing recommendations as to how to ensure affordable patient access to medical cannabis and whether to change, add or reduce the number of growers, processors or dispensaries. Members include Col. Jan Cahill, superintendent of the West Virginia State Police, attorney W. Jesse Forbes, Joe Deegan and Joseph Hatton, deputy commissioner. This group is scheduled to meet at 1 p.m. Nov. 27 at the State Policy Academy in Dunbar to determine an action plan and timeline for the group, and to schedule future meetings.

The work groups will prepare recommendations to be presented to the full Advisory Board for approval. Once approved, they may be included in the Advisory Board's report to the Legislature and Governor, which is due in July 2019.

IMLCC Gains Traction

The Interstate Medical Licensure Compact Commission recently released preliminary data about applications processed and licenses issued through Sept. 30. "The information shows the value of providing an expedited multi-state licensing platform that strongly supports the work and oversight of the individual state medical and osteopathic boards," Executive Director Marschall Smith wrote in a news release.

The first IMLCC license was issued in April. Since then, participating states have processed 297 applications and issued 384 licenses to physicians. In West Virginia, the state Board of Medicine issued 15 IMLCC licenses through Nov. 1, with five more in process. The BOM also has received 11 applications for letters of qualification (LOQs) from West Virginia physicians who are seeking a multi-state license; of those, five have been issued, two were ineligible and four are pending completion.

The Interstate Medical Licensure Compact is a binding statutory agreement among member states, creating a streamlined process that allows physicians to become licensed in multiple states. Its mission is to increase access to health care for patients in underserved or rural areas, and allow them to more easily connect with medical experts using telemedicine technologies. The compact also strengthens public protection by enhancing the ability of states to share investigative and disciplinary information.

West Virginia was the fifth state to join the compact. Today, the IMLC includes 22 states and the 29 medical and osteopathic boards in those states. About 80 percent of physicians meet the criteria for licensure through the IMLC. Among surrounding states, only Pennsylvania has passed IMLC legislation, though implementation remains pending.

The IMLCC met on Friday in Phoenix.

Draft Bill Would Consolidate Nursing Boards

A bill currently in draft stage would terminate the Board of Examiners for Licensed Practical Nurses and move licensure and regulation of LPNs under a new West Virginia Board of Nursing (formerly the WV Board of Examiners of Registered Professional Nurses), effective July 1, 2018. The legislation is expected to be introduced during the 2018 regular session of the Legislature.

A similar bill originated in the House Committee on Government Organization during the 2017 session, but failed to pass. Instead, the concept became an interim study resolution (**HCR 115**) to examine, “the benefits of merging the boards to facilitate participation in national compacts, the cost-savings of combining the two boards, the overlap of the occupations licensed by the boards, and the overlap of representation on the boards by qualifications of board members.”

The resolution also noted that, “The Legislature is committed to promoting efficiencies and economies of scale among the regulator offices regarding the regulations necessary for the citizens to obtain the occupational licenses in this state.”

According to the draft legislation, current RN Board members would continue to serve until their terms expire and until their successors have been appointed and qualified. The Governor would then appoint to the new board four RNs, two advanced practice registered nurses (APRNs) and two LPNs, representing “a variety of nursing practices,” as well as a citizen member. Appointment terms will be five years.

The draft bill also resurrects a Joint Advisory Council on Limited Prescriptive Authority, “to advise the board regarding collaborative agreements and prescriptive authority for advanced practice registered nurses.” Faithful readers may recall that the Advisory Council concept was first called for in the controversial APRN scope of practice legislation passed by the Legislature in 2016.

The Advisory Council, to be appointed by the Governor, would include two allopathic physicians recommended by the WV Board of Medicine who are in a collaborative relationship with APRNs; two osteopathic physicians recommended by the WV Board of Osteopathic Medicine who are in collaborative agreements with APRNs; six APRNs with at least three years of full-time practice experience, including at least one certified nurse practitioner, one certified nurse-midwife and one certified RN anesthetist, all of whom actively prescribe medications; a pharmacist recommended by the Board of Pharmacy; a consumer representative; and a representative from a school of public health in higher education. Members would serve three-year terms.

The LPN Board currently has an amended rule (**10 CSR 4**) pending before the Legislative Rule-Making Review Committee that would allow a \$211,295 increase in licensing fees, or a \$20 annual increase for each of the state’s 7,982 LPNs. The committee is expected to resume discussion of the proposed rule during its December meeting.

OCME Caseload Up as Overdose Deaths Rise

Matt Izzo, administrator of the Office of the Chief Medical Examiner, told the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA) last week that the office’s caseload may reach close to 6,800 in 2017. Through Nov. 12, the OCME and its 48-member staff had processed 5,810 cases since Jan. 1, and performed 1,845 autopsies – both representing increases of more than 18 percent over 2016. On average, he said, the OCME conducts eight autopsies per day, six days per week, at a cost of about \$662 per case. West Virginia has the highest overdose death rate in the U.S.

Izzo also responded to a Legislative Post Audit Review report concerning a review of body transport invoices for fiscal 2010-14. The review found that 25 vendors were overpaid by a total of \$141,316. The review period predates Izzo and other OCME administrators.

Regarding an audit report finding that OCME “entered into an unwarranted, handwritten 10-year contract with Tri-State Mortuary Services,” Izzo said OCME does not view the agreement as valid. Following a second finding that Tri-State received the majority of body transport service assignments and was paid more than \$1.8 million, Izzo said OCME policy now includes a rotation of vendors. A similar rotation policy is in place to prevent conflicts of interest in assignment of county medical examiners and coroners. Body transport expenditures have increased from \$444,076 in 2015 to \$881,620 in 2017. Tri-State Mortuary currently is suspended from body transport assignments, Izzo told LOCHHRA.

In Other Health Care Highlights ...

... Congratulations to Dr. Timothy R. Deer, honored guest at The Foundation for Thomas Health's 24th annual charity gala and auction on Nov. 11 at the Charleston Marriott Town Center. Deer is the president and chief executive officer of The Center for Pain Relief, Inc. in Charleston, which treats more than 3,400 chronic pain patients each month. He is a native West Virginian who received his medical degree from the West Virginia University School of Medicine, where he currently holds the position of clinical professor of anesthesiology. ...

... The West Virginia Board of Medicine has four new board members, including: Timothy J. Donatelli, DPM, of Princeton; the Rev. Janet M. Harman of Charleston; Victoria Mullins, PA-C, of South Charleston; and, attorney Russell O. Wooton of Beckley. They replace Rusty Cain, DPM, of Fairmont; attorney Cheryl L. Henderson of Huntington; and Beth Hays of Bluefield, whose terms expired at the end of September. Mullins' appointment represents the addition of a second physician assistant on the board, as called for in **SB 1014** passed in June, bringing total board membership to 16. Two other members – Kishore Challa, MD, of South Charleston and K. Dean Wright, PA-C, of Huntington – were reappointed to the board. ...

... In a somewhat related development, the Senate Confirmations Committee cancelled its scheduled meeting without explanation last Monday morning, thereby pre-empting an anticipated full Senate vote on Gov. Jim Justice's recent appointments during a noon floor session. The Joint Committee on Volunteer Fire Departments and Emergency Medical Services meeting scheduled for Tuesday also was cancelled. ...

... The state Department of Health and Human Resources has implemented drug screening for applicants of the Temporary Assistance for Needy Families (TANF) program, also known as WV WORKS. The screening requirement is part of a three-year pilot program passed by the Legislature in 2016, but which required approval by the U.S. Administration for Children and Families. To be eligible for TANF, applicants must now complete a drug screening questionnaire to determine reasonable suspicion of drug use. Applicants suspected of illegal drug use will be sent for drug testing; those who test positive will be referred to a substance abuse treatment and counseling program and a job skills program. Applicants who test negative require no further action. WV WORKS offers financial and supportive services such as training assistance, occupational skills development, job search support and child care assistance. According to a report in *The Charleston Gazette-Mail*, a fiscal note estimated the drug-testing program will cost \$55,000 in federal funds in the first year, and \$22,000 each year thereafter. ...

... Mark Simpson recently was appointed chief executive officer of Welch Community Hospital by DHHR Cabinet Secretary Bill Crouch. Simpson had served as chief nursing officer of McDowell County's only acute care facility since 2010 and held various nursing positions at the hospital since 1998. DHHR's Bureau for Behavioral Health and Health Facilities oversees the hospital. Simpson holds an associate's degree in nursing from Bluefield State College, a bachelor's degree in nursing from West Virginia University, a master's in nursing from Marshall University and a master's in business administration from King University. ...

... Social media followers note that posts in recent months by former Delegates Patrick Lanes and Chris Stansbury, and former Sen. Jeff Kessler strike a tone of those who want back in the legislative "game." ...

... Legislative manager Aaron Allred reports that beginning with the upcoming 2018 legislative session, the Legislature will eliminate the "Enacting Section" in bills. Bills must still retain the "Enacting Clause," which is required by the state Constitution. The clause states, "Be it enacted by the Legislature of West Virginia." Allred said the decision was agreed upon by the clerks and chief counsels of both the House and Senate. The "Enacting Section," he wrote, was both unnecessary and redundant with bill titles; too often, mistakes in the section resulted in bill vetoes because of technical errors. Legislative Services will schedule a briefing during December interims to go over the changes. ...

... The Legislative Auditor has recommended that the WV Health Information Network's Board of Directors provide a status update to the Post Audits Division in December concerning the status of its transfer to a private, non-profit corporation, as called for in **HB 2459**, passed during the 2017 regular session. The legislation mandated the transfer by Dec. 31. WVHIN currently is a public-private partnership under the Health Care Authority. The Legislative Auditor, in a Nov. 12 letter to Senate President Mitch Carmichael and House Speaker Tim Armstead, said WVHIN could continue to operate, with its board retaining spending authority, if the transfer is not completed by the deadline.

Rule-Making Review Participation Urged

Sen. Mark Maynard, co-chair of the Legislative Rule-Making Review Committee, is not feeling the love from the public these days. Six senators and six delegates comprise the committee, co-chaired by Delegate Kelli Sobonya, which considers new or updated rules submitted by state agencies, boards and commissions.

“This is the only committee that meets outside the regular sessions that actually takes action and votes on the rules before us. It is my hope to get the public more involved by commenting on rules they’re interested in, or following our committee when we meet,” Maynard wrote in a news release.

Agencies that submit rules are required to provide a window for the public to comment. Maynard said that although comment periods for all rules currently being proposed have closed, the public can still attend the committee’s scheduled meetings and voice any concerns. The committee posts agendas and links to the proposed rules. The committee next meets on Dec. 6 to consider approximately 45 submitted rules.

Quotes of Note:

... ***“He started going through the bags. And I had everything. Two grocery bags full of just stuff. And he looked right at me and he said, ‘Could you not have bought a damn man a banana? Well, that’s exactly what I would say to you. If you can find something wrong with this, you’re looking for a banana. That’s all there is to it. Now, there wasn’t a banana in the bag. I can’t put a banana in the bag if you’re looking for a banana.”***

- Gov. Jim Justice, in a lengthy metaphor involving a hunting trip, a grocery store and his grandfather, drawing a parallel to WV’s natural gas investment deal with China.

... ***“I noticed no one was kneeling.”***

- Senate President Mitch Carmichael, after an a cappella version of national anthem to start last Monday’s floor session by Senate counsel Jennifer Greenleaf, who will represent West Virginia in the Macy’s Thanksgiving Day Parade.

... ***“If we’re not going to do it by rule, then we have to do it by statute.”***

- Sen. Robert Plymale, during a Senate floor session, praising the success of “harm reduction” programs such as needle exchange in Cabell County in reducing incidence of Hepatitis C and directing drug users to rehabilitation programs. Plymale and Sen. Ron Stollings want to expand such programs statewide. A legislative rule also would have extended liability protection to local health departments for such efforts.

... ***“We have a system that’s not very conducive to change.”***

- DHHR Cabinet Secretary Bill Crouch, discussing challenges at William R. Sharpe Jr. Hospital before LOCHHRA last week.

... ***“Cardinal Health and their executives must be held accountable for their role in the opioid crisis ravaging West Virginia and other states. Pharmaceutical companies like Cardinal Health under (CEO George) Barrett’s leadership shipped millions of pain pills to West Virginia, fueling addiction and a public health crisis. Instead of blaming institutions like Lily’s Place for the drug crisis, drug executives need to take responsibility for what they have done to West Virginia.”***

- Congressman Evan Jenkins, following announcement of Barrett’s resignation earlier this month.

Our Next Issue

The next issue of ***Health Care Highlights*** will be published on Dec. 11, following the December interim meetings.

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